

Procedures, Terms and Conditions

PROCEDURES, TERMS AND CONDITIONS OF AUCTION

I. INTRODUCTION

The Federal Communications Commission ("FCC") plans to hold a series of oral and sealed bid auctions for approximately 1400 Interactive Video Data Service (IVDS) licenses. The first auction, which will be an oral auction, will be for 297 IVDS markets. The auction will begin promptly at 9:00 A.M. each day on July 28-29, 1994, and will be held in the Regency Ballroom at the Omni Shoreham Hotel at 2500 Calvert Street, N.W. in Washington, D.C. **Those wishing to participate in the first auction must submit an application in accordance with the Commission's rules and the instructions in the Public Notice for IVDS Auctions, Report No. ABC-94-02, Auction No. 2, released May 23, 1994 ("Public Notice") on or before Monday, June 27, 1994, and must bring to the auction a cashier's check payable to "FCC" or "Federal Communications Commission" in the amount of \$2500 for each five licenses that they expect to win. Limited observation space will be available for members of the general public.**

The auction will be conducted by Tradewinds International, Inc. and Larry Latham Auctioneers, Inc. Prospective bidders are urged to thoroughly familiarize themselves with the Procedures, Terms and Conditions in the Bidder's Package (collectively, "Terms"), the Second Report and Order in FCC Docket No. 93-253, FCC 94-61, released April 20, 1994, and the Fourth Report and Order in Docket No. 93-253, FCC 94-99, released May 10, 1994. Copies of the Second Report and Order are available for a fee from International Transcription Services, Inc. at (202) 857-3800. A copy of the Fourth Report and Order is included in this Bidder's Information Package. **The Terms contained in the Commission Reports and Orders and in the Bidder Package are not negotiable. Prospective bidders are urged to read, review and analyze the auction documents prior to bidding at the auction, to make certain that they completely understand the provisions therein, and are willing to be bound by all of the Terms before making any bid.**

II. BIDDER ELIGIBILITY

In order to be eligible to bid in the auction bidders must submit A) a short form license application (FCC 175 and FCC 175-S) and B) an upfront payment in compliance with applicable FCC Rules and Regulations and as set forth below. As more fully described below, the status of applications will be described in a series of Public Notices. The FCC will announce all qualified bidders in a Public Notice by July 21, 1994.

A. Short Form Application (FCC Form 175)

The FCC Form 175 may be submitted anytime after the release of the Public Notice announcing the auction but must be received by Tradewinds International, Inc. at the address stated below in this Section, no later than 5:30 P.M. EDT, Monday, June 27, 1994. Certain information necessary to complete FCC Form 175, such as market numbers and frequency block numbers for IVDS licenses may be found in these Terms and the enclosure titled "Order of Auctions of IVDS Service Areas" in this Bidder's Package. The Auction No. for this auction is "2". **Only the person or persons identified on FCC Form 175 as qualified to make a bid will be permitted to bid at the auction.**

Completion of Form 175

Applicants are required to complete all the items on the application. A blank Form 175 is enclosed. Applicants should carefully review §1.2105 (a) (2) (ii) and (viii) of the Final Rules which are included in this Bidder's Information Package, prior to completing the Form 175. In completing FCC Form 175, bidders should note the following:

1. In item 6 of Form 175, Auction No., applicants should enter "2".
2. Item 7 requires you to create a ten digit FCC Account Number, a personal identification number that we will use to identify and track your application. You should use your taxpayer identification number (TIN) with a prefix of "0", i.e., 0123456789. If you do not have a taxpayer identification number you may use your ten digit telephone number (i.e. 5552345678). You must use this same number when submitting additional information/material regarding this application, including any monies submitted to the Commission using FCC Form 159, the FCC Remittance Advice, (i.e. use the same number for the Form 175 and the FCC Account Number on FCC 159). Please use this number whenever you write, call, or otherwise inquire about your application. You will need that number to register for the auction on auction day.
3. Items 9 and 10 ask whether the applicant is claiming a preference in the bidding process. As discussed more fully below, certain preferential measures are available to entities listed in item 9. Please ensure that you qualify for a preference before checking "yes" in item 10; the Commission has specific rules defining a "minority" and "small business."
4. For item 11, Market No., the Market No. for each IVDS license to be auctioned is listed in the **second** column of the enclosure titled "Order of Auctions of IVDS Service Areas" under the heading "MSA"; please list the markets you are interested in bidding on in the first column under item 11 labeled "Market No." If you want to bid on more than five markets, you must continue on Form 175-S. For the Frequency Block No. in item 11, applicants should check Block No. 1 if they wish to bid on license A (218-218.5 MHz) and Block No. 2 if they wish to bid on license B (218.5-219 MHz). Applicants who wish to hold either license in a particular market should check both Block No. 1 and Block No. 2. Leave

the other Frequency Block Nos. blank.

5. In item 12, applicants should list the name(s) of a person(s) they want to represent them at the auction. Only one bidding card will be issued to each applicant and only one of the individual(s) listed in item 12 will be permitted to display the bidding card during the auction.

6. Please read the "Certifications" carefully before signing. These certifications help to ensure a fair and open auction and require, among other things, the disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the licenses. **Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocation(s), being barred from future auctions, and/or criminal prosecution.**

Microfiche copies of the FCC Form 175 or 175-S are not required.

Failure to sign the FCC Form 175 will result in dismissal of the application and inability to participate in the auction. Only original signatures on the FCC Form 175 will be permitted. A copy of a correctly completed Form 175 is enclosed.

Where to Send the Form 175

In order to be eligible to bid, an FCC Form 175 application and attachments, including Form 175-S, if needed, must be received by 5:30 P.M. EDT on Monday, June 27, 1994. **Late applications will not be accepted.** Applications should be submitted either by hand delivery, certified U.S. mail (return receipt requested) or sent by private courier. Whether mailed, hand delivered or sent by private courier, applications must be addressed only to:

Tradewinds International, Inc.
General Aviation Terminal, Suite 200
No. 7 Thomas Avenue
Washington National Airport
Washington, D.C., 20001
Attention: IVDS Auction
(202) 637-3221

Applications will not be accepted if delivered to any other location.

No application fee or FCC Form 159 need accompany the FCC Form 175 for the auction.

B. Public Notices of Application Status and Process for Minor Corrections

After the deadline for filing the FCC Form 175 applications has passed on Monday, June 27, 1994 at 5:30 P.M. EDT, the Commission will process all applications to determine whether they are accepted for filing. The Commission will issue a Public Notice listing all applications which are accepted for filing, rejected, and those which have minor defects that may be corrected. The Public Notice will also announce the deadline for filing corrected applications. As described more fully in the Commission's general auction rules, applicants may only make minor corrections to their FCC Form 175 applications. **Applicants will not be permitted to make major modifications such as changes in ownership to their applications.** Failure to sign an FCC Form 175 cannot be corrected and will cause the application to be dismissed and the applicant to be ineligible to participate in the auction. See Section 1.2105 of the Commission's Rules. 47 C.F.R. § 1.2105.

After the deadline for resubmitting corrected applications the Commission will release another Public Notice, no later than July 21, 1994, announcing all applications that have been accepted for filing, including applicants who have corrected defective applications.

III. REGISTRATION AT THE AUCTION

Registration will be held from 1:00 P.M. to 9:00 P.M. on Wednesday, July 27, 1994; from 7:00 A.M. to 8:30 A.M. on Thursday, July 28, 1994; and 7:00 A.M. to 8:30 A.M. on Friday, July 29, 1994 at the Omni Shoreham Hotel, Regency Ballroom, at 2500 Calvert Street, N.W., Washington, D.C. Early registration is strongly encouraged.

All qualified applicants or their designated representatives identified on Form 175 are required to register during the above stated times. Failure to register prior to bidding will cause the applicant to be ineligible to participate in the Auction. Only qualified applicants that were identified in a Public Notice issued prior to the Auction will be permitted to register to bid.

A. Proof of Identity

The qualified applicant's designated representative, identified on Form 175 is required to bring two forms of identification to registration including one form of photo identification (e.g., a valid drivers license or passport) and one additional form of identification.

B. Upfront Payment

In order to be eligible to bid at the auction, applicants must display at least one cashier's check in the amount of two thousand five hundred dollars (\$2,500) U.S. at registration. One cashier's check in the amount of \$2,500 entitles you to be awarded up to five licenses. If you intend to win more than five licenses, you must bring additional \$2,500 cashier's checks, each of which will cover up to five additional licenses. For example, if you wish to win seven IVDS licenses, bring two \$2,500 cashier's checks. If you wish to win twelve IVDS licenses, bring three \$2,500 cashier's checks. If you wish to win thirty two IVDS licenses, bring seven \$2,500 cashier's checks.

The cashier's check(s) must be drawn on a bank insured by the Federal Deposit Insurance Corporation (FDIC) and be made payable to "FCC" or "Federal Communications Commission". No cash or other form of payment will be accepted.

Bidders must carefully calculate the number of IVDS licenses they expect to bid on before the auction, and will not be permitted to bid on additional licenses if they do not have sufficient cashier's checks. Also, if a bidder plans to bid on more than five licenses, they must not bring a single cashier's check in an amount that is a multiple of \$2,500. Bidders must bring several cashier's checks, each in the amount of \$2,500. The Commission cannot process upfront payments in amounts other than \$2,500 and bidders may not be able to bid on more than five licenses without checks of \$2,500. Furthermore, the Commission will not refund any monies if cashier's checks are in amounts larger than \$2,500. Upfront payment(s) will be credited towards the balance due on the license(s) won, but FCC will not make refunds on auction day if the amount of the check(s) exceeds the value of the license(s).

Bidders will be required to temporarily surrender all cashier's check(s) for inspection at registration in order to receive a bidding card to bid at the auction. The checks will only be held for inspection purposes and immediately returned to the bidders after they have been approved as valid.

C. Issuance of Bidding Card

Once the FCC or its contractor or subcontractor has approved the cashier's check and verified the identity of the applicant's designated representative, a numbered bidding card will be assigned to each qualified bidder. Only one of the applicant's designated representatives identified on Form 175 will be given a bidding card.

IV. AUCTION EVENT

The Auction will begin at 9:00 A.M. on Thursday, July 28, 1994 and Friday, July 29, 1994. The auction will be held in the Regency Ballroom at the Omni Shoreham Hotel at 2500 Calvert Street, N.W, Washington, D.C.

V. AUCTION PROCEDURES

Only bidders that have registered in accordance with the provisions of Section III above will be allowed to bid at the auction. The IVDS licenses will be awarded through an open outcry auction. All bidding will be open and public and will be videotaped.

A. Order of Markets to be Auctioned

The order of bidding will be the order in which the markets are listed in the enclosure entitled "Order of Auctions of IVDS Service Areas" in this Bidder's Information Package. The last MSA which will be auctioned on the first day of the auction will be Auction Lot Number 149, MSA #259, State College, PA. Bidding will recommence the following day with Auction Lot Number 150, MSA #85, Johnson City - Kingsport - Bristol, TN - VA.

B. Number of Licenses that May be Acquired

Bidders may acquire licenses in any number of IVDS markets. Both licenses A and B in a single IVDS market will be offered simultaneously but a bidder may only win one license (either A or B) in each IVDS market.

C. Bid Submission Procedures

To bid during either day of the Auction, a bidder need only raise a bidding card, shout out the bid or instruct a bid assistant provided by Larry Latham Auctioneers to call out the bid. Bids must be for a specific dollar amount.

D. Bid Increments

Once the first bid is acknowledged by the auctioneer, subsequent bids must be in such increments as the auctioneer, in its sole discretion, shall designate.

E. Auction Stopping Rule

The auctioneer's declaration that bidding on an IVDS market is closed is final and no further bids will be accepted.

F. High Bidder's Choice Procedures

Once the auctioneer has declared the auction winner, the high bidder will be given the choice of the two licenses in that market. The second high bidder will be assigned the remaining license in the market. Qualified minority and women owned businesses should refer to Section VII of these Terms for additional information.

G. Procedures for High Bidders

At the end of each round of bidding, the two high bidders will be required to sign a High Bid Acknowledgment Form (copy enclosed). The upfront payment (\$2,500 cashier's check) will be collected from the successful bidder immediately after the first license is won in each group of five licenses. No interest will be paid on any funds deposited with the Commission.

H. Winning Bidder Schedule

Winning bidder schedules which identify the licenses purchased, the purchase price for each license, along with down payment amounts due for the licenses sold each day of the auction must be executed by the winning bidder(s) no later than two (2) hours after the conclusion of all bidding on that day. Each winning bidder is encouraged to review and execute the winning bidder schedule as soon as such bidder has completed all of its bidding on each day of the auction.

VI. POST AUCTION PROCEDURES

A. Payment of Down Payment and Remaining Balance Due

The winning bidder for each license must submit sufficient additional funds (a "down payment") to bring the amount of money on deposit with the government to 20% of their winning bid by Monday, August 8, 1994. This down payment must be on deposit at the Commission's lockbox bank by 3:00 P.M., August 8, 1994. Winning bidders that are qualified small businesses, however, need only submit an amount sufficient to bring their monies on deposit with the government up to 10% of their winning bid by August 8, 1994, with the remaining 10% due within five (5) business days after grant of the license. Further details are in the Commission's general auction rules and its IVDS specific auction rules. Except for winners electing to use installment financing, payment of the 80% remaining balance will be due within five (5) business days after the Commission processes the winning bidder's Form 574 (see below) and grants its license. No interest will be paid on any funds deposited with the Commission. **Further instructions on making auction payments are described in Section VII of these Terms.**

B. Submission of Long Form Application (FCC Form 574)

The Commission must receive from winning bidders a properly completed FCC application for an IVDS system license (FCC Form 574) by 5:30 P.M., Monday, August 15, 1994. Send the Form 574 to:

Office of the Secretary
Federal Communications Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554
Attention: Auction Application Processing Section
Phone: (202) 418-1400

The Commission has decided to waive Section 1.1102(7)(a) of its rules on its own motion so that winning bidders need not submit an application fee or Form 159.

After submission of the 574, the Commission will determine whether there are any reasons why the license should not be granted; if there are none, it will grant the license. The continuing validity of the license will be conditioned upon full payment of the remaining balance of the winning bid within five business days after license grant in the manner described in Section VII below.

C. Default penalties

Certain penalties apply if a bidder defaults (e.g. is unable to pay the balance due) after winning the bidding. These penalties are designed to ensure that only serious, qualified bidders participate in the auction. Default penalties are described in Paragraphs 27 - 29 in the Fourth Report and Order, released on May 10, 1994 which is included in this Bidder's Information Package.

Default penalties for designated entities eligible for bidding credits will be calculated based on their high bid, less the bidding credit.

VII. INSTRUCTIONS FOR MAKING AUCTION PAYMENTS

Down payments and final payments must be made in U.S. dollars, must be in the form of a wire transfer or cashier's check, and must be made payable to the "Federal Communications Commission" or "FCC".

Down payments and final payments, whether being paid by wire transfer or cashier's check, must be accompanied by a completed FCC Remittance Advice, Form 159. Both a blank and a correctly completed sample FCC Remittance Advice (Form 159) are included in this Bidder's Information Package, and are described further below in this Section VII.

A. FCC Remittance Advice (Form 159)

High bidders must submit an FCC Form 159 when making any payments to the Commission's lockbox bank. The purpose of the FCC Form 159 is to identify to the FCC who is paying, how much they are paying and what they are paying for. It allows the bank to accurately process your remittance. **Failure to accurately complete your FCC Form 159 could result in a delay in processing your remittance.**

Before completing an FCC Form 159, read the "Instructions For Using FCC Form 159 in this Bidder's Information Package.

- 1) You must complete all of the blocks in the Payor Information Section, (Blocks 1 through 10).
- 2) You must complete the following blocks for each "Item Number Information" in accordance with the Instructions For Using FCC Form 159 (but only if the names of the "payor" and the "applicant" are different): Block numbers 11, 13, 19, 20, and 21.
- 3) You must complete the following auction-specific information in blocks 14 and 17. Block numbers 14 and 17 will be used to identify the particular auction event in which you are participating. Block 17, FCC Code 1, corresponds to the Auction Event Number indicated on the Public Notice which announced the auction event. Please fill in Block 17 with the number 2. For Block 14 (Payment Type Code), please fill in the letters **APAB**.

B. Making Auction Payments by Cashier's Check

Each cashier's checks and corresponding FCC Remittance Advice (Form 159) must be in an individual envelope and specifically addressed to: Mellon Bank, P.O. Box # 358850, Pittsburgh, PA 15251-5840, Attn: Auction Payment.

If delivering an auction payment in person or by courier, the check and FCC Remittance Advice (Form 159) must be delivered to Mellon Bank, 3 Mellon Bank Center, 424 William Penn Way, Pittsburgh, PA 15259, Attn: Wholesale Lockbox Shift Supervisor, 27th Floor (153-2713)

C. Making Auction Payments by Wire Transfer

If making an auction payment by wire transfer, **fax** a completed FCC Remittance Advice (Form 159) to Mellon Bank at (412) 236-5702 at least one hour before placing the order for the wire transfer. On the cover sheet of the fax indicate "Wire Transfer - Auction Payment for Auction Event # 2. When wiring funds, please give your bank the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh

BNF: FCC/AC--9116106

OBI Field: (Skip one space between each information item)
"AUCTIONPAY"

FCC ACCOUNT NO. (Exactly as on Form 159, Block #1)

PAYMENT TYPE CODE (Exactly as on Form 159, Block #14)

FCC CODE 1 (Exactly as on Form 159, Block #17)

PAYOR NAME (Exactly as on Form 159, Block #3)

For further information, please call Regina Dorsey, Chief, Billings and Collections Branch at (202) 632-0241,

VII. DESIGNATED ENTITIES

A. Benefits for Designated Entities

The Commission has provided three basic benefits, described below, for IVDS auction participants who are "minorities", "women" or "small businesses" (collectively, the "Designated Entities"). Definitions of these entities are listed in Subpart Q of Part 1 of the Commission's Rules and in the Bidder's Package.

The first of these benefits is government sponsored installment financing, which is available only to small businesses. The FCC is offering to finance up to 80 percent of a small business's winning bid (high bid minus the monies on deposit with the FCC) over the 5 year term of their IVDS license. Interest will be charged at a fixed rate equal to that in effect for 5 year treasury notes on the day the license is issued. Payments will be interest only for the first two years, with principal amortized over the remaining three years of the license term. The FCC will provide coupon payment books.

The second of these benefits is a bidding credit. Businesses owned by minorities or women are entitled to a 25% bidding credit to win one of the two IVDS licenses in each market. A bidding credit allows the winning bidder to pay less than the amount of its bid. For example, if the winning bid is \$1,000, a business owned by a minority or a woman need actually pay only \$750 for the license. **A bidding credit is available for either license A or license B in each IVDS market, but not both. If the two high bidders for licenses A and B are both designated entities using bidding credits, the highest bidder will be offered the license of its choice and the second highest bidder will be given the option of accepting the license without the credit or declining the remaining license. In the latter event, the second license will be re-auctioned, this time without the use of bidding credits.**

If a bidder is both a small business and a minority/woman owned business, it can obtain installment financing and use bidding credits. For those designated entities utilizing both installment financing and bidding credits, the down payment requirements and installment financing would apply to amounts due after application of the bidding credit. Bidding credits will not be available on the second IVDS license in a market if the other IVDS license was

already won using a bidding credit, however.

The third benefit is the availability of tax certificates to initial investors in minority and women-owned IVDS licensees upon divestiture of their non-controlling investment interests in an IVDS licensee. Tax certificates are also available to IVDS licensees who transfer or assign their licenses to minority or women-owned businesses who are also designated entities. Tax certificates enable initial investors or the IVDS licensee to defer the taxable gain upon sale of their interest or license. More information on tax credits is in the Fourth Report and Order.

B. Unjust Enrichment

Certain penalties apply if a designated entity obtains an IVDS license using the benefits available to designated entities and subsequently transfers or sells its license prematurely. These penalties are explained more fully in the Commission's Fourth Report and Order and in its general auction rules which are included in this Bidder's Information Package.

VIII. OTHER NOTICES

The Commission may by Public Notice or announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or may cancel the auction in its entirety.

The FCC reserves the absolute right, in its sole discretion to withdraw any license from the auction at any time prior to the submission of a bid on such license. All bidders will be bound by announcements of Larry Latham Auctioneers at the auction, even though a bidder may not have actually heard the announcement. The FCC reserves the absolute right to deny any person admittance to the auction and remove any person, including a registered bidder, from the auction.

A video and audio recording of the auction will be made and, if any dispute arises following the auction, the recordings shall be conclusive evidence of what occurred at the auction. All recordings are the property of the FCC and will be made available for viewing by registered bidder in the event of disputes. All reviews shall take place in Washington, D.C., or elsewhere at the sole election of the FCC. No video or audio recordings of the auction process will be allowed by anyone other than the FCC, Tradewinds International, Inc. or Larry Latham Auctioneers, Inc., without the prior written consent of the FCC.